

THE PEW CHARITABLE TRUST'S COMMENTARY

***ON THE REVISED CONSOLIDATED TEXT: DRAFT REGULATIONS ON  
EXPLOITATION OF MINERAL RESOURCES IN THE AREA,  
DATED 29 NOVEMBER 2024 (ISBA/30/C/CRP.1)***

Key

**Black font, red font,** and grey text-boxes are replicated from the Draft Regulations text.

**Blue font** represents commentary or edits proposed by The Pew Charitable Trusts.

**Part XIII**

**Review of these Regulations**

**Regulation 107**

**Review of these Regulations**

1. Five years following the approval of these Regulations by the Assembly, the Council shall undertake a [comprehensive][full] review of the manner in which the Regulations have operated in practice -and may also undertake such a review at any time thereafter.

[1. Alt. The Council shall take a full review of these Regulations. This review shall, at least, include:

(a) The manner in which the Regulations have operated in practice;

(b) The effectiveness and enforceability of the Regulations;

(c) The manner in which the Regulations have ensured compliance with the principles, approaches, and policies pursuant Regulation 2, and the general obligations relating to the marine environment pursuant Regulation 44. 1bis.

1. Alt bis The first review shall take place five years following the approval of these Regulations by the Assembly, and no later than ten years after the adopted of these Regulations by the Council.

1. Alt ter After the review pursuant to paragraph 1bis, the Council may also undertake such a review at any time thereafter, but shall do so at least every ten years.]

2. Any State party, the Commission, the Enterprise, any Contractor (through its Sponsoring State), or Stakeholder (through a State party) may at any time request the Council to consider, at its next ordinary session, revisions to these Regulations and the matter shall be included in the provisional agenda of the Council for that session.

[2. Alt Any State party and any organ of the Authority-, the Commission, the Enterprise, may at any time request the Council to consider, at its next ordinary session, revisions to these Regulations and the matter shall be included in the provisional agenda of the Council for that session.]

3. The Council shall establish a process of public consultation and participation that gives ~~Contractors and Stakeholders~~ adequate time and opportunity to comment on proposed revisions to these Regulations, save for the making of an amendment to these Regulations that has no more than a minor effect or that corrects errors or makes minor technical changes.

4. In the light of that review, the Council may in accordance with the Convention and the Agreement adopt and apply provisionally, pending approval by the Assembly,

amendments to these Regulations, taking into account the recommendations of the Commission or other subordinate organs.

~~[5. Any amendments to these Regulations adopted by the Council and the Assembly, shall not be applied retroactively to the detriment of the Contractors that have already signed an Exploitation Contract with the Authority.]~~

[5 Alt Amendments to these Regulations shall be implemented by existing Contractors, subject to any limitations in the Convention and the Agreement. The Council may provide for a transition period for implementation by existing Contractors of amendments to these Regulations.]

~~[5 Alt 2. The Council may incorporate an appropriate transition period for implementation by existing Contractors of any amendments to these Regulations.]~~

#### Comments

The previous iteration of the Consolidated Text proposed the removal of various alternative wordings, and delegations generally did not oppose those suggestions. The discussion during the second part of the twenty-ninth session are reflected in the revised draft.

We consider the drafting proposal for **paragraphs (1 Alt), (1 Alt bis) and (1Alt ter)** helpful to streamline the drafting and to clarify the minimum timeframe and criteria of the review.

**Paragraphs (2) and (2 Alt)** seem very similar to us. Both require a State to make the request. This avenue may be inaccessible to some stakeholders.

We did wonder how **the LTC** fits into this process? Is the idea the Council considers the request first, then refers it to LTC if they think it has merit, then the LTC would draft textual changes, which would undergo public consultation, following which the LTC would finalise the text and recommend it to the Council, for approval? It might be helpful for DR107 to be more explicit about the process, and the LTC's role within it, in particular:

**Paragraph (3)**, aiming to cover Stakeholder consultation on revision to the Regulations, is welcome but inadequate. More detail than is required to establish meaningful public participation in decision-making by the ISA. We welcome the Netherlands suggestion to establish a process. This is a step in the right direction. But we consider it a flaw that the ISA for the ISA not to have such a process in place already – not waiting for 5 years after Exploitation commences (. The ISA should put in place now, as a matter of urgency, minimum standards and standardised requisite **procedures for all consultations run by the ISA** (as opposed to consultations run by Contractors, which are the subject of DRs 93 (bis) and (ter) in these draft Regulations).

As a body accountable to all of humankind, taking decisions with potential to affect the global environment, formalised processes to ensure appropriate access to information, and public participation in decision-making mechanisms should be paramount for the ISA. But currently appear sorely lacking. We feel the absence now, with ad hoc consultations that are not inclusive (e.g. on the ISA's Strategic Plan, or REMPs), or for the development of important document with zero consultation (e.g. the ISA's data management policy, or the EIA procedures under exploration). To that end, we suggest that the first clause of paragraph (3) read:

*The Council shall establish a process that gives Contractors and Stakeholders adequate time and opportunity to comment on proposed revisions to these Regulations in accordance with the Authority's policy and procedure for public consultation and participation and regulation [insert reference to regulation that provides details for ISA consultation procedures], ...*

Like others (e.g. Australia, Bangladesh, Belgium, Costa Rica, France, Netherlands, Singapore, United Kingdom) we support the retention of **paragraph (5 Alt)**. Given the lack of industry track record, lack of ISA regulatory experience, and the planned length of exploitation contracts (of 30 years, plus extensions), it is important that the ISA retains discretion to amend aspects of the regulatory regime and apply such amendments to existing Contractors where this is required for the ISA to meet its UNCLOS duties. Amendment by the Council of their Regulations is not the same as an amendment of the Contract. Indeed, the draft contract terms in Annex 10 already say that the Contractor must comply with the regulations as amended from time to time. There are already some aspects of the regulations that

specifically envisage being amended during the term of the contract (e.g. DR82 on rates of payment, and DR105 on the inspection regime). So it is important that this DR107(5) enables those provisions and does not undermine them, or the ISA's ability to regulate appropriately, in the light of changing circumstances that may arise.